

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DAVID DESANTIS,

Plaintiff,

v.

5:09-CV-0530
(NAM/GHL)

STATE OF NEW YORK and JUDGE KIMBERLY SEAGER,

Defendants.

APPEARANCES

DAVID DESANTIS

Plaintiff *pro se*

12 Schuyler Street, Apt. 104

Oswego, NY 13126

GEORGE H. LOWE, United States Magistrate Judge

REPORT-RECOMMENDATION & ORDER

The Clerk has sent to the Court for review an amended complaint submitted for filing by *pro se* Plaintiff David DeSantis. Dkt. No. 9. Plaintiff filed his original complaint on May 5, 2009, seeking injunctive, declaratory, and monetary relief against Oswego County Family Court Judge Kimberly Seager and the State of New York. Dkt. No. 1. I recommended that the complaint be dismissed because it failed to state a claim on which relief may be granted; and recommended that Plaintiff may file an amended complaint. Dkt. No. 4.

Plaintiff submitted an objection to the Report-Recommendation. Dkt. No. 5. Chief U.S. District Court Judge Norman A. Mordue conducted a *de novo* review of the matters raised in the Report and Recommendation. Dkt. No. 8. He concluded that, for the reasons set forth in the Report and Recommendation, the complaint is frivolous and fails to state a cause of action. *Id.* at pp. 1-2. The Report and Recommendation was adopted, except that rather than dismissing with leave to replead, the

complaint was “dismissed automatically under 28 U.S.C. § 1915(e)(2)(B) without further Order of the Court unless, within 30 days of the date of this Memorandum-Decision and Order, plaintiff files a non-frivolous amended complaint that states a claim on which relief may be granted.” *Id.* at p. 3 (emphasis in original).

Currently before me is Plaintiff’s amended complaint, which is titled “Non-frivolous Amended Complaint.” Dkt. No. 9. In the amended complaint, which is one single-spaced paragraph in length, Plaintiff asserts that his constitutional rights were violated by “a [female] judge in the Superior Court of Oswego County[,] State of New York.” *Id.* Plaintiff fails to state when or how the alleged violations occurred. In light of the foregoing, the amended complaint fails to state a claim on which relief may be granted and should be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B).

WHEREFORE, it is hereby

RECOMMENDED, that Plaintiff’s amended complaint (Dkt. No. 9) be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B); and it is further


ORDERED, that the Clerk serve a copy of this Report-Recommendation & Order on Plaintiff.

Pursuant to 28 U.S.C. § 636(b)(1), the parties have ten days within which to file written objections to the foregoing report. Such objections shall be filed with the Clerk of the Court.

FAILURE TO OBJECT TO THIS REPORT WITHIN TEN DAYS WILL PRECLUDE

APPELLATE REVIEW. *Roldan v. Racette*, 984 F.2d 85 (2d Cir. 1993) (citing *Small v. Sec’y of Health and Human Servs.*, 892 F.2d 15 (2d Cir. 1989)); 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72, 6(a), 6(e).

Dated: July 28, 2009
Syracuse, New York


George H. Lowe
United States Magistrate Judge